

REMARKS

Claims 1-55 are pending in the application. Claims 1, 14, 32, 37, 43, 44 and have been amended. Claim 55 has been newly added. Reconsideration of this application is respectfully requested.

The Examiner's suggestion that the claims should bear line numbers is challenged. There is no requirement in the patent statute or the Rules of Practice that the claims be given line numbers. Therefore, there is no obligation to number the lines of the claims.

Independent claims 1 and 37 have been amended to positively recite "managing the availability to do work of a plurality of cooperating computers connected in a network". Claim 37 has been further amended to recite a policy manager program comprising program instructions for controlling the computer to perform operations. Dependent claims 43 and 44 have been amended to be compatible with amended independent claim 37. Dependent claims 14, 32 and 50 have been amended to clarify that the performance metrics are derived for n periods of each of the series of time intervals.

The Office Action rejects claims 1-54 under 35 U.S.C 103(a) as unpatentable over U.S. Patent No. 5,459,837 to Caccavale, hereafter Caccavale, in view of U.S Patent No. 6,026,425 to Suguri et al., hereafter Suguri.

This rejection is traversed because the combination of Caccavale and Suguri lacks one or more steps or elements of amended independent claims 1, 19 and 37 and there is no motivation for one of ordinary skill in the art to combine Caccavale and Suguri.

Caccavale does not manage the availability to do work of a plurality of cooperating computers to do work in a network as positively recited in amended independent claims 1 and 37 and in independent claim 19. Rather, Caccavale monitors

performance data of a plurality of servers and based on the monitored data suggests one of the servers to do a particular application in response to a client's request for a suggested server to perform the particular application. Caccavale does not manage the availability of the servers, but merely selects a server to handle the client's particular application. Moreover, Caccavale's servers are not disclosed as cooperating computers. Caccavale's servers do not cooperate in any manner. Each server merely responds to periodic probes from the subscribing clients to run probe applications from which the performance data is derived. The probes are independent and so would be any use of a suggested server by a client.

Since Caccavale lacks cooperating computers, Caccavale also lacks the identifying, receiving, deriving and changing steps or elements of amended independent claims 1, 19 and 37.

The Examiner admits that Caccavale does not teach "changing said set of specific ones of said plurality of cooperating computers based on said performance related metrics", as recited in amended independent claims 1, 19 and 37. The Examiner contends that Suguri discloses this step or element, citing column 4, lines 2-6 and 41-45, and column 25, lines 12-32. The Examiner concludes that it is obvious to combine Caccavale and Suguri.

The conclusion is erroneous because Suguri does not teach the changing step as contended by the Examiner. Suguri teaches in the citations (noted by the Examiner) that nodes can be added or deleted from the system, but does not teach the addition or deletion of nodes from an identified set of specific ones of cooperating computers as recited in amended independent claims 1, 19 and 37. That is, Suguri teaches the addition or deletion of a node to or from the entire system and not of an identified set of the nodes of the system. Thus, the combination of Caccavale and Suguri provides a system in which a server can be added to or deleted from servers 30 and not of an identified set of the cooperating computers of a plurality of cooperating computers, as recited in independent claims 1, 19 and 37.

The Office Action provides no motivation for one skilled in the art to combine Caccavale and Suguri. Caccavale discloses a system that fulfills a client request for an available server to run an application by finding a server that is capable of running the application based on the server's performance metrics and then suggesting the found server to the requesting client. Suguri discloses an entirely different system that balances workloads of a plurality of nodes in a distributed processing system. Caccavale's system and Suguri's system are so different that there is no motivation to one of ordinary skill in the art to combine Caccavale and Suguri as suggested by the Examiner.

The Office Action suggestion to use Caccavale in combination with Suguri is improperly based on the hindsight of Applicants' disclosure. Such hindsight reconstruction of the art cannot be the basis of a rejection under 35 U.S.C. 103. The prior art itself must suggest that modification or provide the reason or motivation for making such modification. In re Laskowski, 871 F.2d 115, 117, 10 USPQ 2d 1397, 1398-1399 (CAFC, 1989). "The invention must be viewed not after the blueprint has been drawn by the inventor, but as it would have been perceived in the state of the art that existed at the time the invention was made." Sensonics Inc. v. Aerosonic Corp. 38 USPQ 2d 1551, 1554 (CAFC, 1996), citing Interconnect Planning Corp. v. Feil, 774 F. 2d 1132, 1138, 227 USPQ 543, 547 (CAFC, 1985).

With respect to dependent claims 7, 8, 25, 26, 43 and 44, the Examiner cites Caccavale, column 4, lines 2-6 and 41-45, and column 15, lines 12-32, as disclosing the subject matter of these claims. These citations of Caccavale have nothing to do with the subject matter of claims 7, 8, 25, 26, 43 and 44. In fact, Caccavale does not even have a column 15. It is noted that the corresponding citations in Suguri describe the addition or deletion of a node to the entire system of nodes, but do not disclose a cluster of computers having a manager connected to a node with step or element of requesting the manager to accept additional work or give up pending work. That is, Suguri does not disclose a cluster of computers and a manager of the cluster.

With respect to claims 14-16, 32-34 and 50-52, the Examiner cites column 4, lines 50-52 and 58-60, column 7, lines 5-15, and column 5, lines 3-5 of Caccavale as disclosing the subject matter of these claims. Claims 14, 32 and 50 each recite performance metrics being derived “for n periods of each of a series of intervals, of which the performance metrics of the nth period thereof includes an aggregate of the performance metrics for a current interval plus n-1 of the preceding intervals”. The column 4, lines 50-52, citation merely discloses that the broker performance mechanism has a central broker program CBP and a performance data collection mechanism PDCM in which the “PDCM provides the CPB with continually updated performance information regarding each server in the server population”. The column 4, lines 58-60, citation discloses that the PDCM commands the client probes “to periodically perform various server primitive operations on some or all of the servers”. The column 4 citations do not disclose the performance metrics being derived for n periods of each of a series of intervals.

The column 7, lines 5-15, citation discloses that the BPM “instructs the probes to periodically measure response time information”. The column 5 citation merely describes a calculation of a performance index. Neither the column 7 citation nor the column 5 citation discloses the performance metrics being derived for n periods of each of a series of intervals, as recited in dependent claims 14-16, 32-34 and 50-52.

With respect to claims 18, 36 and 54, the Examiner cites column 5, lines 3-5 and column 7, lines 5-8 of Caccavale as disclosing the subject matter of these claims. Claims 18, 36 and 54 each recite that the performance metrics are formed “as a data structure having n rows that contain the performance metrics of said n periods, respectively, wherein the performance metrics of the nth row of a preceding interval are discarded during a current interval, and wherein said nth row of the preceding interval is used as a first row in the current interval and the remaining ones of said n rows are shifted down one row position”. The column 7, lines 5-15, citation discloses that the BPM “instructs the probes to periodically measure response time information”. The column 5 citation merely describes a calculation of a performance index. Neither the column 7 citation nor

the column 5 citation discloses the performance metrics being formed of a data structure of the type recited in dependent claims 18, 36 and 54.

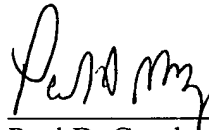
For the reasons set forth above, it is submitted that the rejection of claims 1-54 under 35 U.S.C. 103(a) is erroneous and should be withdrawn.

Newly presented claim 55 is a combination of claims 8 and 18. It is submitted that claim 18 is patentably distinct from Caccavale and Suguri for the reasons set forth above in the discussion of claims 1, 7, 8, 14 and 18 and is, therefore, allowable.

It is respectfully requested for the reasons set forth above that the rejection under 35 U.S.C. 103(a) be withdrawn, that claims 1-55 be allowed and that this application be passed to issue.

Respectfully Submitted,

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